IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.834 OF 2002

Nandlal Mathradas. ..Petitioner.

V/s.

Nestler Limited. ..Respondent.

WITH

COMPANY PETITION NO.1083 OF 2002

Deepak Mathradas HUF ..Petitioner.

V/s.

Nestler Limited. ..Respondent.

WITH

COMPANY PETITION NO.1139 OF 2002

Shishir Khandwala. ..Petitioner.

V/s.

Nestler Limited. ..Respondent.

WITH

COMPANY PETITION NO.400 OF 2003

Shah Consultancy. ..Petitioner.

V/s.

Nestler Limited. ..Respondent.

WITH

COMPANY PETITION NO.163 OF 2004

M/s. Venus International. ..Petitioner.

V/s.

Nestler Limited. ..Respondent.

WITH

COMPANY PETITION NO.829 OF 2004

Tarulata K. Bhatt. ..Petitioner.

V/s.

Nestler Limited. ..Respondent.

WITH

COMPANY PETITION NO.831 OF 2004

Kishore C. Bhatt. ..Petitioner.

V/s.

Nestler Limited. ..Respondent.

Mr.Vishal Thaker for Petitioner in C.P.No. 829/04, 831/04.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 17, 2007.

P.C. :

1. Hearing of these Petitions was deferred till now as the Respondent Company was before BIFR. However, recent on-line status report indicates that BIFR Case No.125 of 2003 is dismissed under section 17(1) of SICA. As a necessary corollary, these matters will have to be now proceeded on merits. All these matters are pending for admission.

2. In so far as Company Petition No.834 of 2002 and 1083 of 2002 are concerned, Petitioner’s claim is

founded on Bills of Exchange duly executed by the Respondent company in favour of the Petitioner. In the first Petition claim amount is Rs.1,06,750/- and in the second Petition is Rs.2,13,500/-. According to the Petitioners, no payment has been released or paid by the Respondent so far, inspite of the statutory notice and institution of the present Petition, which was duly served on the Respondent.

3. In so far as Company Petition No.1139 of 2002 is concerned, the Petitioner's claim is founded on the assertion that the Respondent borrowed the sum of Rs.2,49,965/- from the said Petitioner. The said amount has remained unpaid inspite of the statutory notice as well as institution of the present Petition and service thereof.

4. Similarly, in Company Petition No.400 of 2003, the claim of the Petitioner herein is that there was an agreement between the parties to extend financial assistance to the Respondent. As per the said agreement the petitioner paid the amount to the Respondent, which remained unpaid. The outstanding amount receivable by the Petitioner from the Respondent company is stated to be Rs.7,47,000/-. It is the case of the Petitioner that inspite of the

service of the statutory notice as well as present Petition, amount has not been paid so far.

5. Similarly, in Company Petition Nos.163 of 2004, 829 of 2004 and 831 of 2004, claim in the respective Petition is founded on the Bills of Exchange executed in favour of the Petitioners by the Respondent company. In Company Petition No.163 of 2004, claim is for sum of Rs.9,86,000/-. In Company Petition No. 829 of 2004, the claim amount is Rs.4,13,182/-. In Company Petition No.831 of 2004 claim amount is Rs.2,63,400/-. In all these three Petitions, it is the case of the Petitioner that inspite of the service of statutory notice, outstanding amount was not paid by the Respondent company, as a result, Company Petition came to be filed in this Court, which have been duly served. Even then Respondent has not paid outstanding dues.

6. The case made out in all these Petitions has remained uncontroverted. The Respondent has not filed any reply affidavit on merit except to place on record that the Respondent company was before BIFR. As aforesaid, the proceedings before BIFR have since been dismissed, as a result, hearing of the Petitions have to be proceeded on merits. On merits claims of

the respective Petitioners have been established and supported by the documentary evidence. The fact that the said amount is outstanding is also established from the documents on record. The amount remained unpaid and the Respondents having failed and neglected to pay the amount is also established from the material on record. It is also seen in each of these petition, statutory notice was served on the Respondent company. Inspite of that, outstanding amount has not been paid. Even the institution of Company Petition in the respective case was duly intimated to the Respondent Company. The Respondent company has not bothered to pay any amount towards claim of any of these Petitioners so far. The fact that the Respondent company was before the BIFR presupposes that the financial position of the Respondent company was not satisfactory. In other words, the Respondent company at all relevant time was unable to pay debt to the respective Petitioners. In the backdrop of this fact, this Court has no option but to admit all these Petitions.

7. Accordingly, all these seven Petitions are admitted. However, publication be resorted to only in Company Petition No.834 of 2002. That requirement in other Petitions is dispensed with.

8. The Petitioner in Company Petition No.834 of 2002 shall advertise the Petition in two local newspapers, namely, "Free Press Journal", "Navshakti" and in the Maharashtra Government Gazette. The Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary & Senior Master towards the publication charges, within three weeks with intimation to the Company Registrar failing which the Petition shall stand dismissed for non-prosecution.

9. All the Petitioners in other companion Petitions assure to equally share publication expenses to be incurred by the Petitioner in Company Petition No.834 of 2002. That assurance is accepted.

(A.M.KHANWILKAR,J)